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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,545	09/25/2003	Shmuel Shaffer	99P761USD1	4621
Elsa Keller Siemens Corporation, Legal Administrator Intellectual Property Department 170 Wood Avenue South Iselin, NJ 08830			EXAMINER PEZZLO, JOHN	
			ART UNIT 2419	PAPER NUMBER
			MAIL DATE 11/18/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/672,545

Applicant(s)

SHAFFER ET AL.

Examiner

John Pezzlo

Art Unit

2419

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

I. Claims 20-27 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4, 9, and 15 of U.S. Patent No. 6,738,343 B1.

Although the conflicting claims are not identical, they are not patentably distinct from each other because comparing claim 20 of the application with claim 15 of the patent, comparing claim 23 of the application with claim 4 of the patent, and comparing claim 25 of the application with claim 9 of the patent respectively, each have establishing a primary and secondary signaling connection and establishing a media connection, each have maintaining the media connection using the secondary connection if the primary connection fails.

Claims 20, 23, and 25 of the application do no mention a gatekeeper. However, claims 20, 23, and 25 of the application are anticipated by claims 15, 4, and 9 respectively of the patent, in that claims 15, 4, and 9 of the patent contain all the limitations of claim 20, 23, and 25 respectively of the application therefore are not patently distinct from the earlier patent claims and as such is unpatentable for obvious-type double patenting.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

II. Claims 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Skaperda (US 3,912,873).

1. Regarding claim 20 – Skaperda discloses establishing a primary signaling connection in a packet-switched network between a first client terminal and at least one second client terminal, establishing a secondary redundant signaling connection in said packet-switched network between said first client terminal and said at least one second client terminal, establishing a single packet-switched media connection between said first client terminal and said at least one second client terminal while said primary signaling connection and said secondary redundant

signaling connection are ongoing, signaling for said single media connection being provided by said primary signaling connection, and maintaining said single media connection using said secondary redundant signaling connection if said primary signaling connection fails, refer to Figure 1 and column 12 line 28 to column 13 line 52. Skaperda discloses a fully redundant digital network, wherein two controllers (gatekeepers) callouts 141 and 151 in Figure 1 set-up connections between user terminals (telephones). Skaperda discloses the terminals (telephones) talk over a separate media connections while the gatekeepers (controllers) maintain the system over separate connections as shown in Figure 1. Skaperda discloses that if the primary gatekeeper (controller) fails the secondary gatekeeper (controller) will maintain the media connections so no loss of service is noticed by the terminals (telephones).

2. Regarding claim 21 – Skaperda discloses said primary signaling connection is via a first gatekeeper, refer to Figure 1 and column 12 line 28 to column 13 line 52. Skaperda discloses two controllers (gatekeepers) one primary and one secondary. If the primary gatekeeper fails the secondary gatekeeper will maintain the system.

3. Regarding claim 23 – Skaperda discloses re-establishing a second primary signaling connection via a second gatekeeper if said primary signaling connection via said first gatekeeper has failed, while maintaining said secondary redundant signaling connection and while said media connection is ongoing, refer to Figure 1 and column 12 line 28 to column 13 line 52. Skaperda discloses a fully redundant digital network, wherein two controllers (gatekeepers) callouts 141 and 151 in Figure 1 set-up connections between user terminals (telephones).

Skaperda discloses the terminals (telephones) talk over a separate media connections while the gatekeepers (controllers) maintain the system over separate connections as shown in Figure 1. Skaperda discloses that if the primary gatekeeper (controller) fails the secondary gatekeeper (controller) will maintain the media connections so no loss of service is noticed by the terminals (telephones).

Response to Arguments

Applicant's arguments with respect to claims 20-27 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claims 24-27 are allowable over the prior art of record.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Pezzlo whose telephone number is (571) 272-3090. The examiner can normally be reached on Monday to Friday from 8:30 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel, can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C.

or faxed to:

(571) 273-8300

For informal or draft communications, please label "PROPOSED" or "DRAFT"

Hand delivered responses should be brought to:

Jefferson Building

2A15

500 Dulany Street

Alexandria, VA, 22313.

John Pezzlo

16 November 2008

/John Pezzlo/

Primary Examiner, Art Unit 2419